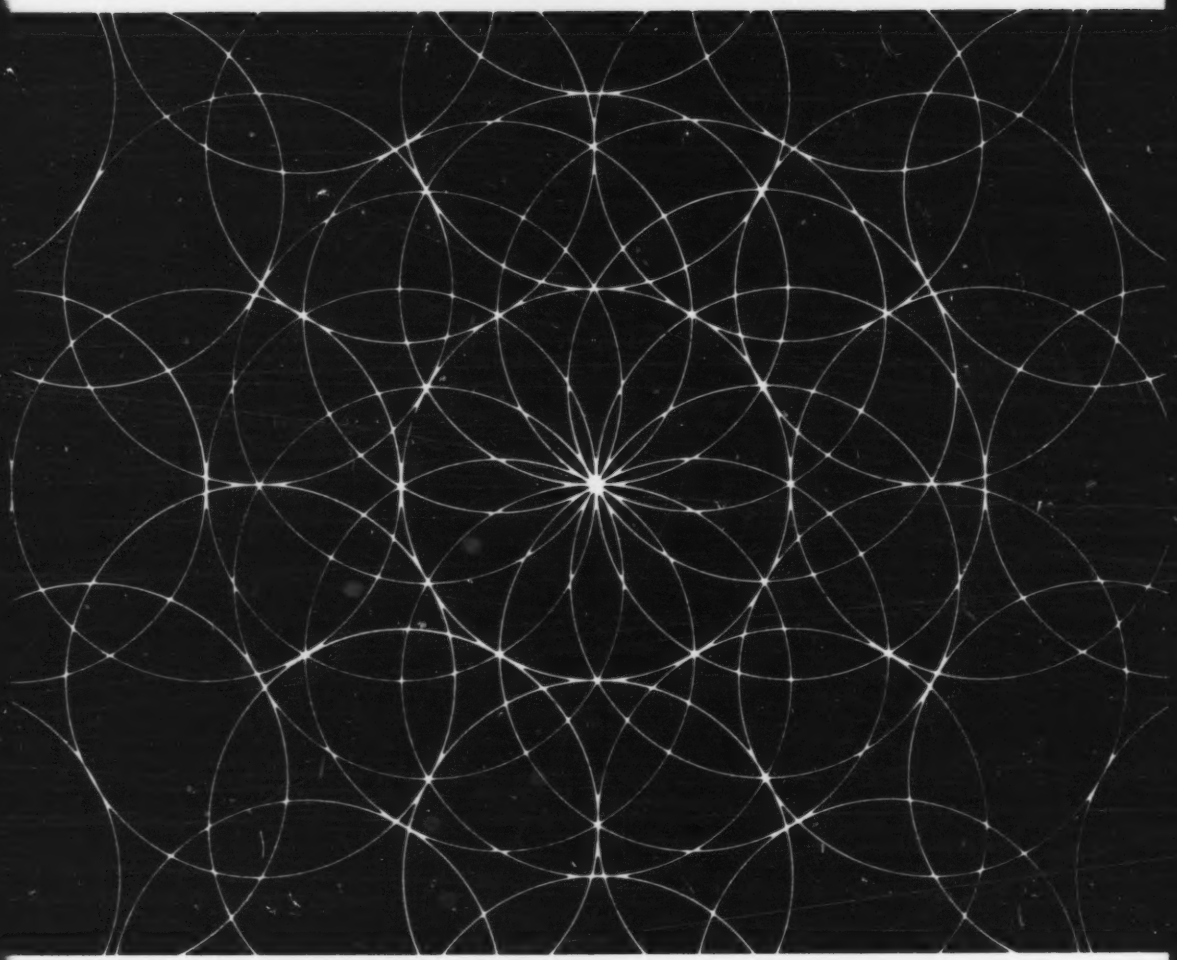
Report on

1982

The Law of Domicile



MANITOBA
LAW REFORM COMMISSION

LAW REFORM COMMISSION

MANITOBA

COMMISSION DE RÉFORME DU DROIT

REPORT

ON

THE LAW OF DOMICILE

Report #53

December 1, 1982

The Manitoba Law Reform Commission was established by "*The Law Reform Commission Act*" in 1970 and began functioning in 1971.

The Commissioners are:

C.H.C. Edwards, Q.C., *Chairman*
Knox B. Foster, Q.C.
D.Trevor Anderson
George H. Lockwood, C.C.J.
Richard Thompson
Geraldine MacNamara
Anne M. Riley

Chief Legal Research Officer:

Ms. Donna J. Miller

Legal Research Officers:

Ms. Sandra Geddes
Ms. Colleen Kovacs
Ms. Valerie C. Perry
Ms. Janice Tokar

Secretary:

Miss Suzanne Pelletier

The Commission offices are located at 521 Woodsworth Building, 405 Broadway, Winnipeg, Manitoba R3C 3L6. Tel. (204) 944-2896.

TABLE OF CONTENTS

Page No.

CHAPTER 1 - INTRODUCTION 1

CHAPTER 2 - REFORM OF THE LAW OF DOMICILE 5

THE RELEVANCE OF DOMICILE 5

THE TYPES OF DOMICILE 6

Domicile of Origin 7

Domicile of Choice 9

Domicile of Dependency 11

1. Married women 11
2. Children 12
3. Mentally incompetent persons 15

MECHANICS OF REFORM 16

CHAPTER 3 - SUMMARY OF RECOMMENDATIONS 18

NOTES 21

APPENDIX "A" - THE (PROPOSED) DOMICILE ACT WITH COMMENTARY 25

APPENDIX "B" - UNIFORM DOMICILE ACT 39

APPENDIX "C" - EXCERPTS FROM THE ONTARIO FAMILY LAW REFORM ACT . . . 41

APPENDIX "D" - EXAMPLES OF THE USE OF THE TERM "DOMICILE" IN MANITOBA STATUTES 42

CHAPTER 1

INTRODUCTION

1.01 In this Report, the Commission assesses the need to reform the law of domicile and makes recommendations for its improvement, modernization and reform.

1.02 Domicile determines the personal law of an individual. It has been defined as

> the legal relation existing between a person and the system of law of a place which in fact or by legal fiction is deemed to be that person's home.[1]

The system of law of a place in which a person's domicile is found must be one over which a single system operates. For this reason, subject to statutory provisions, one speaks of a person being domiciled in Manitoba, not Canada; in New York, not the United States of America; or in England, not the United Kingdom.

1.03 Domicile is part of a branch of the law known as conflict of laws. Legal questions often apply to events and transactions which have a significant relationship to more than one system of law. Conflict of laws provides for "a special body of rules and methods for their ordering and resolution".[2]

1.04 Domicile performs three main functions in conflict of laws:

1. Choice of law - Principally, domicile is used to determine which system of law will apply to a legal issue involving two or more systems of law. For example, if a Winnipegger marries a Torontonian in Vancouver, the legal issue may arise as to which law - Ontario's, Manitoba's or British Columbia's - will govern

the parties' capacity to marry. Domicile may be relevant in this example as a choice of law or connecting factor because it is well-established that the law of each party's antenuptial domicile may govern their capacity to marry.

2. Recognition of foreign judgments - Domicile is also used in the common law to determine whether a foreign judgment will be recognized. For example, a divorce will be recognized in Canada if, at the time it was granted, the husband was domiciled in the foreign jurisdiction.

3. Jurisdiction of Manitoba courts - Finally, domicile is used to determine a court's jurisdiction over a party; for example, a Manitoba court will accept jurisdiction to grant a degree of nullity in a voidable marriage if the husband is domiciled in Manitoba.

1.05 How does the law apply a domicile to a person? In the first place, every person at birth receives a domicile of origin. This is based generally on parentage, not on place of birth, with the result that one can be born in Manitoba but have a domicile of origin in another state or country. Aside from a domicile of origin, there are two other types of domicile. Adults, apart from married women and mentally incompetent persons, are entitled to a domicile of choice. The law will ascribe a domicile of choice to them if they acquire a residence with the intention of making it their principal residence permanently, or at least, indefinitely. The third type of domicile is a domicile of dependency and it applies to married women, children and mentally incompetent persons. In particular, married women take the domicile of their husbands while children generally have the domicile of their fathers. Persons born mentally incompetent normally take the domicile of their fathers whereas those persons who become mentally incompetent retain the domicile they had when they began to be legally treated as insane.[3]

1.06 Domicile has been criticized for several reasons. First, it is said that there are too many legal fictions ascribed to it with the result that a person may have a domicile in a state or country in which (s)he has never set

foot. It has also been judged to be discriminatory against women, and groups such as The Royal Commission on the Status of Women in Canada have recommended that a woman, on marriage, should be able to retain her domicile or subsequently acquire a new domicile, independent of that of her husband.[4] Third, it is said that to prove a domicile of choice, too much emphasis is given to the intent - or animus manendi [5]-to live in a place indefinitely.

1.07 Despite these criticisms, no province in Canada has yet introduced substantial legislative reform of the law of domicile.[6] In 1962, the Uniform Law Conference of Canada passed a Uniform Domicile Act (Appendix B) which purports to be a code on the law of domicile.[7] Much of the Uniform Act was derived from the recommendations of the Private International Law Committee of England which produced its first report in 1954.[8] No province or territory has yet adopted the Uniform Act although limited changes to the domicile of married women and children have been legislated in Ontario[9] (Appendix "C") and Prince Edward Island[10] and recommended in Saskatchewan.[11]

1.08 We have assessed whether we should consider fundamental reform to the law of domicile when no other Canadian jurisdiction has enacted substantial legislation on the subject. We have concluded, for reasons subsequently stated, that little, if any, harm would result from unilateral change.

1.09 One of the major impediments to unilateral action prior to 1968 was the prerequisite of a provincial domicile for a court to assume jurisdiction in a divorce petition. If change to domicile had then been introduced unilaterally, it would have been possible for a situation to have arisen where no Canadian court would have had jurisdiction to entertain some petitions for divorce.[12] However, this problem no longer arises as the Divorce Act of 1968 creates a new Canadian domicile, rather than continuing the concept of a provincial domicile.

1.10 A further argument against unilateral reform arises from the doctrine of renvoi . Renvoi can be used in conflict of laws when the jurisdiction in which a court is situate and the applicable foreign jurisdiction have

different, or differently defined, choice of law or connecting factors such as domicile. When renvoi is employed, a court, in turning to the appropriate foreign jurisdiction that governs a legal issue, applies their corresponding choice of law or connecting factor (such as domicile) rather than the internal law, excluding choice of law rules, of the foreign jurisdiction. It could be argued that if Manitoba defines domicile differently to other Canadian jurisdictions the occasions on which renvoi may be applied will multiply.

1.11 We do not think, however, that renvoi would pose a serious problem if Manitoba alone enacted substantial reform to the law of domicile. Quebec has had legislation on domicile for some time,[13] and, as stated, Ontario and Prince Edward Island have recently enacted some limited reform on the subject. Consequently, domicile is not at present uniformly defined throughout Canada so that renvoi could potentially arise even now. In addition, we are aware of only one reported case where renvoi has been applied in Canada.[14] Moreover, legislation can always restrict or, indeed, nullify the application of renvoi , at least in the legislating jurisdiction, and thereby minimize its impact. We are therefore of the view that there are no convincing arguments against the consideration of unilateral reform of the law of domicile.

1.12 The structure of this Report is as follows. In Chapter 2, the Commission addresses the criticisms of the law of domicile in greater detail and makes recommendations for reform where it is of the view that change to domicile is warranted. In discussing the need for reform, we review recent legislation in other provinces and countries and particularly the Uniform Domicile Act. The recommendations of reform are summarized in Chapter 3 and a draft Act to implement them is provided for in Appendix A, along with a commentary.

CHAPTER 2

REFORM OF THE LAW OF DOMICILE

THE RELEVANCE OF DOMICILE

2.01 Domicile is an important concept in conflict of laws. As explained in Chapter 1, it determines the personal law of an individual. In particular, its use as a choice of law or connecting factor includes the following:

1. A person's capacity to marry may depend on the law of his or her antenuptial domicile.[15] A disability of either party under the law of his or her domicile to enter into marriage with the other may invalidate the marriage.

2. The proper law of a marriage contract is in the absence of reasons to the contrary the actual domicile of the husband at the time of the contract.[16]

3. Whether a child is recognized as legitimate at the date of birth depends on the law of the father's domicile.[17]

4. Succession to movables is governed by the law of the domicile of the deceased.[18]

5. The manner and formalities of making a will, and its intrinsic validity and effect, so far as it relates to movables, are generally governed by the internal law of the place where the testator was domiciled at the time of his death.[19]

2.02 Domicile is also important with respect to the recognition of foreign judgments and to the jurisdiction of Manitoba courts. It is relevant in these other areas in the following respects:

1. The court of the husband's domicile generally has jurisdiction to grant a nullity decree for a voidable marrriage.[20]

2. The court of the domicile of the husband or wife may grant a nullity decree where a marriage is void, rather than voidable;[21] under a void marriage the wife is treated as a single woman and therefore she can acquire her own domicile of choice.

3. Any foreign divorce decree rendered by the court of the husband's domicile will generally be recognized as valid in Manitoba.[22]

4. Manitoba courts have jurisdiction to grant a divorce if the petitioner is domiciled in Canada and if either (s)he or the respondent has been ordinarily resident in Manitoba for a period of at least one year prior to the petition and has actually resided in that province for at least 10 months of that period.[23]

5. Under Queen's Bench Rule 28(d), service out of Manitoba of a statement of claim may be made wherever any relief is sought against any person domiciled or ordinarily resident within Manitoba.

2.03 In many Manitoba statutes, domicile has also been adopted to determine choice of law and jurisdiction, and to circumscribe eligibility to an occupational organization. In Appendix D to this Report, we set forth the provisions in primary legislation where domicile has been used for these various purposes by the Legislature.

THE TYPES OF DOMICILE

2.04 We explained in Chapter 1 that there are three types of domicile:

domicile of origin, domicile of choice and domicile of dependency. We shall summarize here in greater detail the law pertaining to this triad and where the need exists for the reform of each. Before doing so, however, we shall set out the two axioms of domicile which will help to explain their inter-relationship:

1. Every person has a domicile.

2. No person has more than one domicile at the same time.

Domicile of Origin

2.05 We stated in Chapter 1 that everyone at birth is given a domicile of origin and this is generally based on parentage not on place of birth. In particular, it is well-established that a child born in wedlock whose father is living takes the domicile of the father at the time of birth and that a child born out of wedlock or in wedlock posthumously takes the domicile of the mother. The domicile of origin of a foundling is said to be that of the place where (s)he is found. There is no clear authority with respect to the domicile of an adopted child.[24]

2.06 A domicile of origin is distinguished from the other two kinds of domicile. First, it cannot be extinguished by any act of its owner. To quote Lord Westbury,[25]

> When another domicile is put on, the domicile of origin is for that purpose relinquished, and remains in abeyance during the continuance of the domicile of choice; but as the domicile of origin is the creature of law, and independent of the will of the party, it would be inconsistent with the principles on which it is by law created and ascribed, to suppose that it is capable of being by the act of the party entirely obliterated and extinguished.

It also differs from a domicile of choice in that a domicile of origin attaches to every person regardless of their manifest intention. Nor, unlike a domicile

of choice, need one actually reside in a jurisdiction for one to have a domicile of origin there - as previously stated, a domicile of origin is based generally on parentage, not on place of birth.

2.07 There are two further distinguishing features pertaining to domicile of origin. The first is that a domicile of origin returns automatically into operation in any interval that may occur between the abandonment of one domicile of choice and the acquisition of another. This feature is called the doctrine of revival of the domicile of origin. It arises from the tenet, earlier stated, that every person must have a domicile; it exists to ensure that no legal gaps occur in a person's domicile.

2.08 The doctrine of revival of the domicile of origin presupposes that a person who has abandoned a domicile of choice is more closely attached to the country of his or her domicile of origin than to the last domicile of choice, and here lies its defect. Consider the following example:

> A has a domicile of origin in Ireland. She moves to Winnipeg when she is 20 and lives here until she is 70. At that time she decides to move to Victoria and severs her connections with Winnipeg. She dies en route to Victoria.

At her date of death, A is domiciled in Ireland because she has abandoned her domicile of choice in Manitoba and her domicile of origin in Ireland has revived. Consequently, her movables will be administered according to Irish law. Further examples of the operation of the revival of the domicile of origin could allow for more absurd results, given that a person may have a domicile of origin in a country in which they have never set foot.[26]

2.09 The doctrine of the revival of the domicile of origin may have been justifiable in Imperialist England when much of the common law pertaining to domicile was developed. That it should be applied to a country such as our own when much of our population is born outside Canada is unsuitable. This was also the conclusion of the Uniform Law Conference of Canada. Subsection 3(4) of the Uniform Domicile Act (Appendix "B") provides, in effect, that a domicile

of choice continues until another domicile of choice is acquired. The Act thus implicitly abolishes the doctrine of the revival of the domicile of origin and thereby parallels the approach adopted by courts in the United States.[27] We favour this approach. It seems to us that it would result generally in connecting a person to a jurisdiction to which (s)he is more closely tied. We accordingly recommend:

RECOMMENDATION 1

That the domicile of a person continue until a new domicile is acquired; and the rule of law known as the revival of the domicile of origin whereby a person's domicile of origin revives upon the abandonment of a domicile of choice be abolished.

2.10 A further distinguishing feature pertaining to a domicile of origin is that it is more enduring and thereby harder to displace than a domicile of choice. Two English cases are often cited in support of this statement: Winans v. Attorney-General [28] and Ramsay v. Liverpool Royal Infirmary.[29] In these cases, the deceased person whose estate was being administered, after residing for 37 and 36 years respectively in England, was nevertheless deemed to have retained his non-English domicile of origin. These cases are also used to support the statement that undue emphasis is given to the manifest intention of a person to reside indefinitely in a place with respect to a domicile of choice. This will be discussed further under the following heading.

Domicile of Choice

2.11 Adult men and unmarried women may have a domicile of choice. A domicile of choice has been defined as,[30]

> That place . . . in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose, but with a present intention of making it his permanent

> home, unless and until something (which is unexpected, or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home.

There are then two requisites for a domicile of choice: actual residence and an intention to reside indefinitely. It is in respect to the latter requirement that problems have arisen.

2.12 In Winans , for example, it has been said that "the tastes, habits, conduct, actions, ambitions, health, hopes and projects of Mr. Winans deceased, were all considered as keys to his intention to make a home in England".[31] Mr. Justice Scarman (as he then was), in reflecting upon the intention requirement in a later case, had this to say:[32]

> Domicile cases require for their decision a detailed analysis and assessment of fact arising within that most subjective of all fields of legal inquiry - a man's mind. Each case takes its tone from the individual propositus whose intentions are being analyzed; anglophobia, mental inertia, extravagant habits, vacillation of will - to take four instances at random - have been factors of great weight in the judicial assessment and determination of four leading cases.

The over-emphasis of intention is further exacerbated by the notion, earlier stated, that a domicile of origin is difficult to displace. It seems that for a court to be ultimately satisfied of that displacement by a domicile of choice there must be overwhelming evidence.

2.13 This emphasis on the intention to reside indefinitely has been the subject of much criticism. In our view, there are basically two disadvantages flowing therefrom: first, it may result in lengthy civil litigation, especially where an estate is involved and the court must conjecture as to the intentions of the decedent; second, it may result in uncertainty given that it appears possible for a man voluntarily to spend 36 or 37 years of his life in a country and still not acquire a domicile of choice.

2.14 The solution adopted by the Uniform Law Conference of Canada in 1962 is generally to presume that a person intends to reside indefinitely in the state where his principal residence is situate (see s. 4(2) of the Act, Appendix "B"). This statutory presumption was initially recommended by the Private International Law Committee of England.[33] It diminishes the importance of the intention element by relegating it to a position where it is relevant only in the exceptional case. We favour this approach as it would provide for a simpler and clearer application of domicile of choice. We recommend:

RECOMMENDATION 2

That domicile of choice be reformed so that a person is presumed to intend to reside indefinitely in the state and subdivision where his principal home is situate, unless a contrary intention appears.

Domicile of Dependency

2.15 The law applies a domicile of dependency to married women, children and mentally incompetent persons on the theory that members of these groups have a relationship to another on whom they are dependent. We discuss domicile as it relates to each group in this "traditionally offensive trilogy"[34] separately.

1. Married Women

2.16 Married women take the domicile of their husbands until they are widowed or divorced. The law applies this domicile to them on the traditional view that they are dependent on their husbands, and on the theory that a husband and wife should have a uniform domicile. A domicile of dependency for

married women has been described as "the last barbarous relic of a woman's servitude".[35] Ontario,[36] Prince Edward Island,[37] and England[38] all now have legislation abolishing the domicile of dependency for married women, thereby allowing them to acquire an independent domicile to their husbands. A similar approach was adopted by the Uniform Law Conference of Canada in their Uniform Act (s. 4). There is no reason to perpetuate the continuance of a married woman's dependent domicile. Indeed, her domicile of dependency should have been abolished long ago. We recommend:

RECOMMENDATION 3

That the rule of law whereby a married woman has at all times the domicile of her husband be abolished.

2. Children

2.17 We have set forth in paragraph 2.05 the details pertaining to the domicile of origin acquired by persons at birth. When a child's domicile changes from the domicile of origin as a result of a change in the parent's domicile, the new domicile the child acquires is a domicile of dependency, not a domicile of origin. It will change concurrently with the adult's on whom the child is deemed dependent. A domicile of dependency will continue until the child reaches the age of majority, which is 18 years in Manitoba, or with respect to females, until marriage, whichever first occurs.

2.18 There have been reforms introduced elsewhere to the domicile of children. In England, legislation was passed in 1973 so that an independent domicile can now be acquired at the age of 16, or younger if a person marries under that age.[39] The Commons passed legislation to allow an independent domicile to be acquired at this age, rather than 18, on the basis that this is the age a child can marry and can live independently of the father.[40] While 16 is also the age at which a child can marry in Manitoba with parental consent,[41] we see no reason to grant an independent domicile at an age

earlier than that at which the right to contract as an adult and other legal rights are generally bestowed. What rather in our view is needed is the provision for rules where the family unit has divided. It is in this area that the present law breaks down because it will often not link a child to the jurisdiction with which (s)he has the closest connection.

2.19 For example, we mentioned earlier that a child born in wedlock assumes the domicile of the father. This rule may be justifiable where a family lives together as one unit. But what reason is there for this rule to apply when a couple has separated and the children habitually reside with their mother? There are two solutions. The first is to abolish the domicile of dependency for children and to allow a child to acquire a domicile of choice in the jurisdiction in which (s)he resides and intends to reside indefinitely. This was the solution essentially chosen by the Uniform Law Conference of Canada in their Uniform Act (Appendix "B"). The alternative is to retain the domicile of dependency for children but provide for further rules so that a domicile will more closely reflect the jurisdiction to which a child has his or her closest connection.

2.20 This second approach was adopted in Ontario (Appendix "C") and Prince Edward Island,[42] and has been recommended in Saskatchewan.[43] Section 68 of the Ontario Family Law Reform Act reads as follows:

68(1) Subject to subsection (2), a child who is a minor,

(a) takes the domicile of his or her parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;

(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause (a) or (b); or

(d) takes the domicile of the mother, where the domicile of the

child cannot be determined under clause (c).

68(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age.

2.21 We generally favour Ontario's approach rather than the solution adopted by the Uniform Law Conference of Canada. To replace a domicile of dependency for children with a domicile of choice in our view would be an undesirable reform for it assumes that a child has the intention to reside in a place indefinitely. One can imagine a situation occurring where a child's parents are domiciled in one jurisdiction while the child in another because of the lack of a manifest intention. Ontario's approach has also the benefit of being adopted in two provinces and considered in another, whereas the Uniform Act has not yet been adopted by any province or territory.

2.22 Although we generally favour Ontario's legislation, we recommend two amendments. First, with respect to s. 68(1)(b), we would remove the phrase "where the child resides with one parent only". This amendment has the effect of broadening the rule so that it would apply where, for example, a child habitually resides with one parent but spends the summer months with the other. We would also define parents to include those who are not married to each other. We recommend:

RECOMMENDATION 4

That the domicile of dependency for children be reformed by enacting the following legislation:

In this section

(a) "minor" means a person under the age of 18 years who has not married;
(b) references to the parents of a minor include adoptive

parents and parents who are not married to each other.

A person who is a minor,

(a) takes the domicile of his parents where both parents have a common domicile;
(b) takes the domicile of the parent with whom the minor habitually resides;
(c) takes the domicile of the father, where the domicile of the minor cannot be determined under clause (a) or (b); or
(d) takes the domicile of the mother, where the domicile of the minor cannot be determined under clause (c).

3. Mentally incompetent persons

2.23 There are two common law rules concerning the domicile of mentally incompetent persons:

1. A person who is born mentally incompetent has, so long as (s)he is mentally incompetent, the domicile of a dependent child;

2. A person who becomes mentally incompetent retains the domicile (s)he had when (s)he "began to be legally treated as insane".[44]

We think that generally these rules should be codified into legislation. As well, there should be a provision which allows the committee of a mentally incompetent person to change the domicile of the mentally incompetent person with the approval of the Court of Queen's Bench. A relevant consideration for determining whether approval should be given is the effect of a change of domicile upon any child who may have a domicile of dependency based upon the mentally incompetent person. We recommend:

RECOMMENDATION 5

That there be legislation clarifying the domicile of mentally incompetent persons as follows:

> A person who is born mentally incompetent has, so long as he is mentally incompetent, the domicile of a minor; and a person who becomes mentally incompetent retains, so long as he is mentally incompetent, the domicile he had immediately prior to his becoming mentally incompetent.

RECOMMENDATION 6

That a committee of a mentally incompetent person be allowed to change the domicile of the mentally incompetent person with the approval of the Court of Queen's Bench.

RECOMMENDATION 7

That the Court of Queen's Bench, in determining whether to approve a change of domicile under recommendation 6, consider in addition to all other relevant circumstances, the effect of the change of domicile upon any child of the mentally incompetent person.

MECHANICS OF REFORM

2.24 The foregoing recommendations should be set forth in a Domicile Act similar to the one we have drafted in Appendix "A" to this Report. The scope of the Act, and the transition period, should be clarified in the legislation.

In particular, it should be made clear that the changes to domicile will have only a prospective effect where domicile is used as a choice of law or connecting factor, and where it is used to determine jurisdiction of Manitoba courts. It should also be clarified that where a person is found domiciled in another jurisdiction that only the internal law of that jurisdiction, excluding choice of law rules, should be applied. This would nullify the application of renvoi as it applies to domicile in Manitoba, as explained in Chapter 1 of this Report.

The Commission accordingly recommends:

RECOMMENDATION 8

That the Legislature enact a statute similar to The (Proposed) Domicile Act found in Appendix "A" to this Report to implement the Commission's recommendations.

RECOMMENDATION 9

That the legislation contain a transition provision clarifying that it will have only prospective effect.

RECOMMENDATION 10

That the legislation contain a provision clarifying that where a person is found domiciled in another jurisdiction, the law of that jurisdiction, excluding its choice of law rules, should apply.

CHAPTER 3

SUMMARY OF RECOMMENDATIONS

The recommendations of the Commission are as follows:

1. That the domicile of a person continue until a new domicile is acquired; and the rule of law known as the revival of the domicile of origin whereby a person's domicile of origin revives upon the abandonment of a domicile of choice be abolished.

2. That domicile of choice be reformed so that a person is presumed to intend to reside indefinitely in the state and subdivision where his principal home is situate, unless a contrary intention appears.

3. That the rule of law whereby a married woman has at all times the domicile of her husband be abolished.

4. That the domicile of dependency for children be reformed by enacting the following legislation:

   In this section:

   (a) "minor" means a person under the age of 18 years who has not married;
   (b) references to the parents of a minor include adoptive parents and parents who are not married to each other.

   A person who is a minor,

   (a) takes the domicile of his parents, where both parents have a common domicile;
   (b) takes the domicile of the parent with whom the minor habitually

resides;

(c) takes the domicile of the father, where the domicile of the minor cannot be determined under clause (a) or (b); or

(d) takes the domicile of the mother, where the domicile of the minor cannot be determined under clause (c).

5. That there be legislation clarifying the domicile of mentally incompetent persons as follows:

A person who is born mentally incompetent has, so long as he is mentally incompetent, the domicile of a minor; and a person who becomes mentally incompetent retains, so long as he is mentally inccompetent, the domicile he had immediately prior to his becoming mentally incompetent.

6. That a committee of a mentally incompetent person be allowed to change the domicile of the mentally incompetent person with the approval of the Court of Queen's Bench.

7. That the Court of Queen's Bench, in determining whether to approve a change of domicile under recommendation 6, consider in addition to all other relevant circumstances, the effect of the change of domicile upon any child of the mentally incompetent person.

8. That the Legislature enact a statute similar to The (Proposed) Domicile Act found in Appendix "A" to this Report to implement the Commission's recommendations.

9. That the legislation contain a transition provision clarifying that it will have only prospective effect.

10. That the legislation contain a provision clarifying that where a person is found domiciled in another jurisdiction, the law of that jurisdiction,

excluding its choice of law rules, should apply.

This is a Report pursuant to section 5(2) of "The Law Reform Commission Act" signed this 1st day of December 1982.

Clifford H.C. Edwards, Chairman

Knox B. Foster, Commissioner

D. Trevor Anderson, Commissioner

George H. Lockwood, Commissioner

Richard Thompson, Commissioner

Geraldine MacNamara, Commissioner

M. Anne Riley, Commissioner

NOTES

1. R.H. Graveson, The Conflict of Laws (7th ed.) at 189.

2. American Law Institute, Restatement, Second, Conflict of Laws, section 1 at 1.

3. See Dicey and Morris on The Conflict of Laws (10th ed.) 1980 vol. I at 139-141.

4. Report of The Royal Commission on the Status of Women in Canada at 237, para. 53.

5. Animus manendi is defined in Black's Law Dictionary (5th ed.) as "[t]he intention of remaining; intention to establish a permanent residence".

6. In 1975, l'Office de Revision du Code Civil published a Report on the Domicile of Human Persons recommending that articles 79-86 of the Code Civil pertaining to domicile be repealed and replaced with the concept of habitual residence. From contact with Maitre Louise Fournier of Direction de Droit Civil, Ministere de la Justice, in Quebec, we have learned that at this time it is the intention of the Ministere de la Justice not to implement the recommendations of this Report but to retain the concept of domicile.

7. Uniform Law Conference of Canada, Proceedings of the Forty-first Annual Meeting (August, 1961) at 23-24 and 139.

8. Cmd. 9068.

9. Family Law Reform Act ,R.S.O. 1980 c. 152 s. 65, 68 (Appendix "C" to this Report).

10. Family Law Reform Act S.P.E.I. 1978 c. 6, s. 60.

11. Law Reform Commission of Saskatchewan, Proposals for an Equality of Status of Married Persons Act (May, 1982) at 12-13.

12. Suppose Manitoba abolishes the doctrine of revival and replaces it with a continuation of the domicile of choice, while other provinces retain the doctrine of revival (and a review of section 2 of the draft Act, Appendix "A", shows that this is what we shall recommend). It would be possible for a person to be domiciled in Manitoba according to the other 9 provinces, because his or her domicile of origin is here and it has revived, but for Manitoba to view this person as domiciled elsewhere, becaue (s)he has acquired a domicile of choice elsewhere which is deemed to continue until (s)he acquires another. This situation could have led to serious difficulties prior to 1968 but the fact that domicile is seldom used to determine a court's jurisdiction now, and then only in addition to other factors, considerably reduces, if not eliminates this problem.

13. Code Civil art. 79-86 and see supra n. 6.

14. Ross v. Ross (1894) 25 S.C.R. 307.

15. Hutchings v. Hutchings [1930] 4 D.L.R. 673, 39 Man. R. 66 [1930] 2 W.W.R. 565 (Man. C.A.). In England, Cheshire has been a strong advocate of the intended matrimonial home theory as a superior test of jurisdiction to that of the parties' antenuptial domicile. See Chesire, Private International Law (9th ed.) at 337 ff.

16. Devos v. Devos (1970) 10 D.L.R. (3d) 603, [1970] 2 O.R. 323 (C.A.); app'd Re McCarthy (1970) 16 D.L.R. (3d) 72 (N.S., Prob. Ct.).

17. See J.-G. Castel, Introduction to Conflict of Laws at 129-130.

18. See J.-G. Castel, Conflict of Laws: Cases, Notes and Materials (4th ed.) at 11-20 and 11-21 and cases noted there.

19. "The Wills Act", C.C.S.M. c. W150, subsection 39(2). But see subsection 40(1) for other connecting factors for determining the validity of wills re movables.

20. Diachuk v. Diachuk [1941] 2 D.L.R. 607, 49 Man. R. 102 (Man.K.B.); and see D. v. D. (1973) 36 D.L.R. (3d) 17 (H.C.) where the more recent English case of Ross Smith v. Ross Smith [1963] A.C. 280 (H.L.), which

expanded the grounds of jurisdiction by allowing nullity actions based upon the residency of both parties, is considered.

21. D. v. D. supra n. 20.

22. Holub v. Holub (1976) 71 D.L.R. (3d) 698(Man. C.A.).

23. Divorce Act R.S.C. 1970, c. D-8 subsection 5(1).

24. William Binchy, "Reform of the Law Relating to the Domicile of Children: A Proposed Statute" (1979) 11 Ottawa L.R. 279 at 280.

25. Udny v. Udny (1869) L.R. 441 at 458.

26. See, for example, In Re O'Keefe [1940] Ch.D. 124 where the decedent was found to be domiciled in Ireland notwithstanding she visited Ireland only once in her lifetime, on a short visit with her father.

27. See supra n. 2, section 19 at 78.

28. [1904] A.C. 287 (H.L.).

29. [1930] A.CC. 588 (H.L.).

30. Lord v. Colvin (1859), 4 Drew 366 at 376, 62 E.R. 141, app'd Wadsworth v. McCord (1886) 12 S.C.R. 466 at 475; also app'd Osvath-Latkoczy v. Osvath-Latkoczy (1959) 19 D.L.R. (2d) 495 at 496 (S.C.C.).

31. Casdagli v. Casdagli [1919] A.C. 145 (H.L.) at 178, per Lord Atkinson.

32. In Re Estate of Fuld (No. 3) [1966] 2 W.L.R. 717 (P.D.A.) at 723.

33. Supra n. 8 (First Report).

34. R.H. Graveson, "The Reform of the Law of Domicile" (1954) 70 L.Q.R. 492 at 511.

35. Formosa v. Formosa [1962] 3 All E.R. 419 (C.A.) at 422, per Lord Denning.

36. Family Law Reform Act R.S.O. 1980 c. 152 s. 65(3).

37. Family Law Reform Act S.P.E.I. 1978 c. 6 s. 60.

38. Domicile and Matrimonial Proceedings Act 1973 c. 45, s. 1.

39. Id. s. 3(1).

40. Hartley and Karsten, "Statutes: The Domicile and Matrimonial Proceedings Act 1973" (1974) 37 Mod. L. Rev. 179 at 179-180, note 6.

41. "The Marriage Act", C.C.S.M. c. M50, s. 21(1)(b).

42. Supra n. 10.

43. Supra n. 11.

44. Supra n. 3 at 139, Rule 16.

APPENDIX "A"

THE (PROPOSED) DOMICILE ACT WITH COMMENTARY

1(1) Every person has a domicile.

1(2) No person has more than one domicile at the same time.

COMMENT

Section 1 reiterates the two principles of domicile in the common law. It is copied from subsections 3(1) and (2) of the Uniform Domicile Act.

2 The domicile of a person continues until a new domicile is acquired; and the rule of law known as the revival of domicile of origin whereby a person's domicile of origin revives upon the abandonment of a domicile of choice is abolished.

COMMENT

Section 2 is similar to subsection 3(4) of the Uniform Domicile Act. That is, that subsection has been interpreted to abolish the doctrine of the revival of the domicile of origin.[1] We have merely expanded the provision to clarify that this is its intent.

3 The rule of law whereby a married woman has at all times the domicile of her husband is abolished.

COMMENT

Section 3 is not contained in the Uniform Domicile Act. It merely clarifies that the principles for determiing domicile set forth in section 4 (infra) apply to women and men alike. A similar section is found in the legislation of Ontario[2] (see Appendix C) and Prince Edward Island[3] and has

been recommended in Saskatchewan.[4]

4(1) Except as provided in sections 5 and 6, a person is capable of acquiring an independent domicile.

COMMENT

Subsection 4(1) is not contained in the Uniform Domicile Act. It clarifies that all individuals, except those who are minors (section 5) and those who are mentally incompetent (section 6) are capable of acquiring an independent domicile as provided for in subsection 4(2).

4(2) A person acquires an independent domicile in the state and in the subdivision thereof in which that person has his principal home and in which he intends to reside indefinitely.

COMMENT

Subsection 4(2) is similar to subsection 4(1) of the Uniform Domicile Act. It reforms domicile by presuming that it is where a person has his or her principal home and in which (s)he intends to reside indefinitely.

4(3) For the purpose of subsection (2) a person is presumed to intend to reside indefinitely in the state and subdivision where his principal home is situate, unless a contrary intention appears.

COMMENT

Subsection 4(3) provides that a person presumes to reside indefinitely where his or her principal home is situate, unless a contrary intention appears. Read in conjunction with subsection 4(2), this means that a person's domicile will be in the state and subdivsion in which a person's principal home is situate unless a person proves that (s)he does not intend to reside

indefinitely in that state or subdivision. In that case, one reverts to the last independent domicile attained by that person in accordance with subsection 4(2).

Subsection 4(3) diminishes the importance of animus manendi (a person's "hidden mental attitude towards a place") as evidenced in the English cases of Winans v. Attorney General [5] and Ramsay v. Liverpool Royal Infirmary. [6] Whereas under the common law intention had to be examined in every instance to determine a person's domicile, it is now relegated to a position where it is pertinent only in the exceptional case.

4(4) Subsection (3) does not apply to a member of a component of the Canadian forces that is referred to in the National Defence Act (Canada) as a regular force or a member of any other naval, land, or air force, or a person entitled to diplomatic immunity or serving an international organization.

COMMENT

Subsection 4(4) is similar to paragraph 4(2)(c) of the Uniform Act. It explicitly excludes the list of persons so named from subsection 4(3) because they are generally sojourners. The domicile of these persons will be determined by subsection 4(2), without the presumption contained in subsection 4(3) and, consequently, these persons will be governed by a domicile which is defined similarly to a domicile of choice at common law.

5(1) In this section

(a) "minor" means a person under the age of 18 years who has not married;

(b) references to the parents of a minor include adoptive parents and parents who are not married to each other.

5(2) A person who is a minor,

(a) takes the domicile of his parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the minor habitually resides;

(c) takes the domicile of the father, where the domicile of the minor cannot be determined under clause (a) or (b); or

(d) takes the domicile of the mother, where the domicile of the minor cannot be determined under clause (c).

COMMENT

Section 5 is similar to subsection 68(1) and section 61 of the Family Law Reform Act(s) of Ontario and Prince Edward Island respectively (see Appendix C). A similar provision has been recommended by the Law Reform Commission of Saskatchewan.[7] Section 5 retains the concept of a domicile of origin, and the domicile of dependency insofar as it pertains to children. In this Commission's view, it would not be appropriate to apply an independent domicile to children. This is because of the difficulty in rebutting the presumption that a person's domicile is his or her principal home. That is, if section 4 applied to children, it could result in a child's parents being domiciled in X jurisdiction (because they do not intend to reside indefinitely in Y jurisdiction) but their child being domiciled in Y (because (s)he cannot prove the contrary intention). Our proposed Act differs from the Uniform Domicile Act which applies the same test of domicile to minors as to adults with, as explained, potentially different results.

6(1) In this section,

(a) "Act" means The Mental Health Act;

(b) "court" means the Court of Queen's Bench;

(c) "mentally incompetent person" means a person who

(i) has been declared to be mentally disordered pursuant to the Act;

(ii) has been declared to be incapable of managing his affairs, pursuant to the Act;

(iii) is a compulsory resident of a psychiatric facility;
(iv) is the subject of an order of supervision; or
(v) is certified as a mental retardate pursuant to the Act;

and the expression "mentally incompetent" has corresponding meaning.

6(2) A person who is born mentally incompetent has, so long as he is mentally incompetent, the domicile of a minor under this Act; and a person who becomes mentally incompetent retains, so long as he is mentally incompetent, the domicile he had under this Act immediately prior to his becoming mentally incompetent.

COMMENT

Subsection 6(2) generally codifies the determination of domicile for mentally incompetent persons as it exists under the common law. That is, under the common law, the domicile of a person who is born mentally incompetent is determined as if (s)he continued to be a dependent child[8]; a person who becomes mentally incompetent retains the domicile (s)he had "when [s]he began to be legally treated as insane".[9] However, the determination of a minor's domicile and domicile generally is different under the Act than at common law(see sections 4 and 5 supra) and consequently different results may be achieved in resolving the domicile of a mentally incompetent person under the Act than at common law.

6(3) The committee of a mentally incompetent person may change the domicile of the mentally incompetent person with the approval of the court.

COMMENT

Subsection 6(3) is similar to section 5 of the Uniform Act. Given the rules regarding the domicile of a mentally incompetent person, it may be that such a person will have a domicile to which (s)he no longer has any personal connection. For example, a person who became mentally incompetent in British

Columbia and has since moved to Manitoba would generally, under subsection 6(2), be regarded as being domiciled in British Columbia despite the fact that (s)he may have settled here with family for a lengthy period and no longer have any personal connection to British Columbia. This subsection affords the committee the right, on approval of the Court of Queen's Bench, to change the domicile to reflect more closely the place to which the mentally incompetent person is connected.

6(4) The mentally incompetent person shall, at least ten days before the date fixed by the court for the hearing of the application, be served with a true copy of the application.

COMMENT

Subsection 6(4) ensures that the mentally incompetent person will be served with a true copy of the application so that (s)he may appear and speak to the motion. A similar provision is contained in "The Mental Health Act" with respect to an application for committeeship.[10]

6(5) In determining whether to approve a change of domicile under subsection (1), the court shall consider, in addition to all other relevant circumstances, its effect upon any child of the mentally incompetent person.

COMMENT

Subsection 6(5) requires the court to consider the effect of the change of domicile upon the children, if any, of the mentally incompetent person. This provision is not contained in either the Uniform Domicile Act (Appendix B) or the Private International Law Committee Code. It is added in response to Professor Graveson's criticism of the Code from which much of the Uniform Domicile Act was derived.[11]

7(1) Nothing in this Act affects the domicile of a person at a time before this Act comes into force.

COMMENT

Section 7 contains rules clarifying the transition and scope of the Act. Subsection 7(1) ensures that where the domicile of a person is relevant for a time prior to the effective date of the Act, that it will not take retrospective effect. Consider this example. The validity of a will is challenged and it accordingly becomes relevant to determine the testator's domicile at the time the will was made pursuant to section 40(1) of "The Wills Act", C.C.S.M. c. W150. Subsection 7(1) of the proposed Act ensures that the testator's domicile will be decided according to the law of domicile as it existed prior to the proposed Act.

7(2) Nothing in this Act affects the jurisdiction of any court in any proceedings commenced before this Act comes into force.

COMMENT

Subsection 7(2) is similar to subsection 7(1) but whereas the latter provides for a transition rule pertaining to domicile as a connecting factor regarding choice of law, subsection 7(2) sets forth a transition rule insofar as domicile determines a court's jurisdiction. Consider this example. A statement of claim is issued from the Court of Queen's Bench upon a defendant who is presently residing outside of Manitoba. In response to the defendant's challenge concerning the jurisdiction of the Manitoba court, the plaintiff asserts that the defendant is domiciled within Manitoba and, pursuant to Queen's Bench Rule 28(d), jurisdiction should not be at issue (Queen's Bench Rule 28(d) allows for service out of the jurisdiction where a defendant is "domiciled or ordinarily resident in Manitoba"). Subsection (2) clarifies that where the statement of claim is issued prior to the effective date of the proposed Act, that reference shall be made to the law of domicile as it existed prior to the proposed Act in determing jurisdiction.

7(3) The domicile of a person shall be determined under this Act to the exclusion of the laws of any other state or subdivision.

COMMENT

Subsection 7(3) defines, in part, the scope of the proposed Act's application; it determines that in case of dispute, a person's domicile is determined by the law of the forum or court - that is, the local law to which a court belongs. This means that where domicile is at issue in proceedings before the Manitoba courts, that reference alone shall be made to the law of domicile in Manitoba in determining where a person is domiciled. Subsection 7(3) is similar to subsection 3(3) of the Uniform Domicile Act.

> 7(4) Where a person is found domiciled in another state or subdivision, the law of that state or subdivision, excluding its choice of law rules, shall apply.

COMMENT

Subsection 7(4) attempts to resolve generally the problem of what is legally known as renvoi. Renvoi arises in conflict of laws when the law of the forum, or court, and the lex causae (the law which governs a question under a rule of the conflict of laws) have not only different substantive laws but different (or differently defined) connecting factors for determining choice of law. Consider the following fact situation:

> Anne dies intestate in British Columbia. She leaves movables in Manitoba where her personal representative applies for Letters of Administration. Anne has been living separate and apart from her husband for 15 years since she moved to British Columbia. Her husband is resident and domiciled in Manitoba. There has never been any property settlement between Anne and her husband.

Both Manitoba and British Columbia agree that succession to movables is determined by the law of Anne's last domicile. However, the two jurisdictions have different substantive laws respecting succession to movables. That is, in British Columbia, separation precludes the surviving spouse from taking part in the deceased spouse's estate[12] whereas in Manitoba separation is not a bar.[13] In addition, British Columbia and Manitoba have differently defined connecting factors; under the proposed Act for Manitoba, Anne would be capable

of acquiring an independent domicile (section 2 (supra) abolishes the domicile of dependency of a married woman) and given that she has her principal home in British Columbia, that is where she would be domiciled. According to British Columbia law, however, she would be treated as being domiciled in Manitoba because that is the domicile of her husband and at common law she takes his domicile.[14]

Renvoi arises in this manner. When the Manitoba courts determine that British Columbia law governs succession to the movables in Anne's estate (because, according to the proposed Act, Anne is domiciled there), do they apply the "internal or domestic" substantive law of British Columbia, excluding its choice of law rules, so as to preclude Anne's surviving spouse a share in her estate? Or do they apply, as Anne's surviving husband might argue, the whole law of British Columbia, including its choice of law rules so that Anne would be domiciled in Manitoba and, accordingly, there would be no bar to her husband's entitlement? If the Manitoba courts followed the second approach - that is, if they applied the whole law of British Columbia including its choice of law rules - they would be applying the theory of simple renvoi or "remission".[15] If they applied merely the internal law of British Columbia, there would be no application of renvoi.

Subsection 7(4) clarifies that Manitoba law will always govern where there is a conflict between the connecting factors of the lex fori (Manitoba) and the lex causae (in this case British Columbia). It thus rejects the application of renvoi where domicile is the connecting factor for choice of law. Applying subsection 7(4) to the foregoing example, Anne would be seen to be domiciled in British Columbia and, accordingly, her surviving husband would be precluded from the enjoyment of any part of her estate.

8 This Act comes into force on a day fixed by proclamation.

THE (PROPOSED) DOMICILE ACT: COMPLETE TEXT

1(1) Every person has a domicile.

1(2) No person has more than one domicile at the same time.

2 The domicile of a person continues until a new domicile is acquired; and the rule of law known as the revival of domicile of origin whereby a person's domicile of origin revives upon the abandonment of a domicile of choice is abolished.

3 The rule of law whereby a married woman has at all times the domicile of her husband is abolished.

4(1) Except as provided in sections 5 and 6, a person is capable of acquiring an independent domicile.

4(2) A person acquires an independent domicile in the state and in the subdivision thereof in which that person has his principal home and in which he intends to reside indefinitely.

4(3) For the purpose of subsection (2) a person is presumed to intend to reside indefinitely in the state and subdivision where his principal home is situate, unless a contrary intention appears.

4(4) Subsection (3) does not apply to a member of a component of the Canadian forces that is referred to in the National Defence Act (Canada) as a regular force or a member of any other naval, land, or air force, or a person entitled to diplomatic immunity or serving an international organization.

5(1) In this section

(a) "minor" means a person under the age of 18 years who has not married;

(b) references to the parents of a minor include adoptive parents and parents who are not married to each other.

5(2) A person who is a minor,

(a) takes the domicile of his parents, where both parents have a common domicile;

(b) takes the domicile of the parent with whom the minor habitually resides;

(c) takes the domicile of the father, where the domicile of the minor cannot be determined under clause (a) or (b); or

(d) takes the domicile of the mother, where the domicile of the minor cannot be determined under clause (c).

6(1) In this section,

(a) "Act" means The Mental Health Act;

(b) "court" means the Court of Queen's Bench;

(c) "mentally incompetent person" means a person who

(i) has been declared to be mentally disordered pursuant to the Act;

(ii) has been declared to be incapable of managing his affairs, pursuant to the Act;

(iii) is a compulsory resident of a psychiatric facility;

(iv) is the subject of an order of supervision; or

(v) is certified as a mental retardate pursuant to the Act;

and the expression "mentally incompetent" has corresponding meaning.

6(2) A person who is born mentally incompetent has, so long as he is mentally incompetent, the domicile of a minor under this

Act; and a person who becomes mentally incompetent retains, so long as he is mentally incompetent, the domicile he had under this Act immediately prior to his becoming mentally incompetent.

6(3) The committee of a mentally incompetent person may change the domicile of the mentally incompetent person with the approval of the court.

6(4) The mentally incompetent person shall, at least ten days before the date fixed by the court for the hearing of the application, be served with a true copy of the application.

6(5) In determining whether to approve a change of domicile under subsection (1), the court shall consider, in addition to all other relevant circumstances, its effect upon any child of the mentally incompetent person.

7(1) Nothing in this Act affects the domicile of a person at a time before this Act comes into force.

7(2) Nothing in this Act affects the jurisdiction of any court in any proceedings commenced before this Act comes into force.

7(3) The domicile of a person shall be determined under this Act to the exclusion of the laws of any other state or subdivision.

7(4) Where a person is found domiciled in another state or subdivision, the law of that state or subdivision, excluding its choice of law, shall apply.

8 This Act comes into force on a day fixed by proclamation.

NOTES TO APPENDIX "A"

1. See Gilbert D. Kennedy's commentary in (1961) 39 Can. B. Rev. 124; W.S. Tarnopolsky, "The Draft Domicile Act - Reform or Confusion?" vol. 29 no. 4 Sask. B. Rev. 161 at 168-169.

2. Family Law Reform Act , R.S.O. 1980 c. 152 s. 65(2) reproduced in Appendix C.

3. Family Law Reform Act , S.P.E.I. 1978 c. 6 s. 60.

4. Law Reform Commission of Saskatchewan, Proposals for an Equality of Status of Married Persons Act (May, 1982) at 12-13.

5. [1904] A.C. 287 (H.L.).

6. [1930] A.C. 588 (H.L.).

7. Supra, n. 4.

8. Dicey and Morris on the Conflict of Laws (10th ed.) 1980 Vol. I at 141.

9. Id. at 139.

10. C.C.S.M. c. M110 s. 58.

11. R.H. Graveson, "Reform of the Law of Domicile" (1954) 70 L.Q.R. 492 at 511-512. See also J.-G. Castel, Canadian Conflict of Laws (1975) at 132.

12. See the Estate Administration Act , R.S.B.C. 1979 c. 114 s. 111.

13. "The Devolution of Estates Act" , C.C.S.M. c. D70, which sets forth statutory rules to determine who benefits from an estate where a decedent dies intestate, does not preclude separated spouses from receiving a share in their deceased spouse's estate. See Sysiuk v. Sysiuk (1948) 55 Man. R. 501 (C.A.).

14. See, for example, Re Murray Estate [1921] 3 W.W.R. 874, 31 Man. R. 362

(K.B.).

15. The Manitoba court could also adopt what is referred to as "total renvoi "or the "foreign court principle". Under this type of renvoi ,the Manitoba court endeavours to decide a case exactly as a British Columbia court would. The court must not only apply the foreign conflict of law rules but also whatever theory of renvoi prevails in the foreign jurisdiction. The Canadian courts have never used total renvoi ; even partial or simple renvoi is uncommon, although section 6(1) of "The Personal Property Security Act" , C.C.S.M. c. P35, directs the use of renvoi as does section 6(1) of the Uniform Personal Property Security Act (1971 Proceedings, pages 78, 181).

APPENDIX "B"

UNIFORM DOMICILE ACT

1. In this Act, "mentally incompetent person" means . . .

2. This Act replaces the rules of the common law for determining the domicile of a person.

3. (1) Every person has a domicile.

(2) No person has more than one domicile at the same time.

(3) The domicile of a person shall be determined under the law of the Province.

(4) The domicile of a person continues until he acquires another domicile.

4. (1) Subject to section 5, a person acquires and has a domicile in the state and in the subdivision thereof in which he has his principal home and in which he intends to reside indefinitely.

(2) Unless a contrary intention appears,

(a) a person shall be presumed to intend to reside indefinitely in the state and subdivision where his principal home is situate, and

(b) a person shall be presumed to have his principal home in the state and subdivision where the principal home of his spouse and children (if any) is situate.

(3) Subsection (2) does not apply to persons entitled to diplomatic immunity or in the military, naval or air force of any country or in the service of an international organization.

5. The person or authority in charge of a mentally incompetent person may change the domicile of the mentally incompetent person with the approval of

a court of competent jurisdiction in the state and subdivision thereof in which the mentally incompetent person is resident.

6. This Act comes into force on a day to be fixed by the Lieutenant Governor by his proclamation.

APPENDIX "C"

EXCERPTS FROM THE ONTARIO FAMILY LAW REFORM ACT, R.S.O. 1980 c. 152

65(3) Without limiting the generality of subsections (1) and (2),

...

(c) the same rules shall be applied to determine the domicile of a married woman as for a married man.

68(1) Subject to subsection (2), a child who is a minor,

(a) takes the domicile of his or her parents, where both parents have a common domicile;
(b) takes the domicile of the parent with whom the child habitually resides, where the child resides with one parent only;
(c) takes the domicile of the father, where the domicile of the child cannot be determined under clause (a) or (b); or
(d) takes the domicile of the mother, where the domicile of the child cannot be determined under clause (c).

68(2) The domicile of a minor who is or has been a spouse shall be determined in the same manner as if the minor were of full age.

These provisions are identical to those contained in the Family Law Reform Act S.P.E.I. 1978 c. 6 sections 60 and 61.

APPENDIX "D"

EXAMPLES OF THE USE OF THE TERM "DOMICILE" IN MANITOBA STATUTES

The Civil Service Act , C.C.S.M. c. C110

Preference to veterans, etc.

14(2) The preference shall be given to any person who

. . .

(b) during any of the periods mentioned in sub-clause (i) or (ii) of clause (a), served outside Canada in a theatre of action as a member of the Canadian Legion War Service Incorporated, the Canadian Council for the Young Men's Christian Association of Canada, the Knights of Columbus Canadian Army Huts, the Salvation Army Canadian War Services, or any other such instutition authorized to serve in similar manner by the appropriate naval, army, or air force authority and who at the commencement of that service was domiciled in Canada, or Newfoundland, and who left the service in good standing and with an honourable record; or

. . .

(d) is a Canadian citizen and is a widow of a person who died from causes arising during service as described in clause (a), (b), or (c) and who was domiciled in Canada at the time of the death of her husband.

The Surrogate Courts Act , C.C.S.M. c. C290

Where decedent had no domicile in the province

21(2) Where the testator or intestate had no fixed place of abode in, or resided out of, the province at the time of his death, the grant may be made by the Surrogate Court of any surrogate district in which the testator or intestate had property at the time of his death.

The Insurance Act , C.C.S.M. c. I40

Payment to foreigner

128(4) Where the person entitled to receive money payable under a contract of insurance, not being insurance of the person, is domiciled or resides in a foreign jurisdiction and payment, valid according to the law of that jurisdiction, is made to the person, payment so made is valid.

Payment outside province

182(3) Where a person entitled to receive insurance money is not domiciled in the province, the insurer may pay the insurance money to that person or to any other person who is entitled to receive it on his behalf by the law of the domicile of the payee.

Beneficiary under disability

199 Where it appears that a representative of a beneficiary who is under disability may, under the law of the domicile of the beneficiary, accept payments on behalf of the beneficiary, the insurer may make payment to the representative; and any such payment discharges the insurer to the extent of the amount paid.

Beneficiary under disability

230.3 Where it appears that a representative of a beneficiary who is under disability may under the law of the domicile of the beneficiary accept payments on behalf of the beneficiary, the insurer may make payment to the representative and any such payment discharges the insurer to the extent of the amount paid.

Payment outside province

230.5(4) Where a person entitled to receive insurance money is not domiciled in the province the insurer may pay the insurance money to that person or to any person who is entitled to receive it on his behalf by the

law of the domicile of the payee and any such payment discharges the insurer to the extent of the amount paid.

Payment to personal representative

230.5(5) Where insurance money is by the contract payable to a person who has died or to his personal representative and such deceased person was not at the date of his death domiciled in the province, the insurer may pay the insurance money to the personal representative of such person appointed under the law of his domicile ,and any such payment discharges the insurer to the extent of the amount paid.

The Occupational Therapists Act , C.C.S.M. c. O5

Persons ineligible to serve as officers

18 A member of the board shall cease to hold office if

...

(b) he moves his domicile from the province;

...

The Physiotherapists Act , C.C.S.M. c. P65

Disqualification of members of the board

18 A member of the board shall cease to hold office if

...

(c) he removes his domicile from the province;

...

The Succession Duty Act

Definitions

1 In this Act,

...

(i) "deceased" includes any deceased person whether or not any duty is payable under this Act in respect of the death of that person

and whether or not that person was domiciled or resident within the province immediately before his death;

...

18(2) Where

(a) property of a deceased, other than real property, is situated within the province;

(b) the deceased, at the time of his death was neither a resident of the province nor domiciled in the province; and

(c) the successor to the property is neither a resident of the province nor domiciled in the province;

no duty is payable on that property.

The Private Trade-Schools Act , C.C.S.M. c. T130

Court Proceedings

12 No person who is not registered as the keeper or operator of a trade-school under this Act is capable of maintaining any action or other proceeding in any court in the province in respect of any contract made in whole or in part within the province, or against any person domiciled in the province, in the course of, or in connection with, business carried on by any trade-school.

The Trustee Act , C.C.S.M. c. T160

Publication

43(6) The notice shall in all cases be published in one issue of The Manitoba Gazette and in one issue of a newspaper published or circulating in the district where the donor of the trust or debtor making the assignment resided, or in case of a deceased's estate, the deceased was domiciled .

The Wills Act , C.C.S.M. c. W150

Interest in movables under will

39(2) Subject to other provisions of this Part, the manner and formalities

of making a will, and its intrinsic validity and effect, so far as it relates to an interest in movables, are governed by the internal law of the place where the testator was domiciled at the time of his death.

Form of validity relating to movables

40(1) As regards the manner and formalities of making a will of an interest in movables, a will is valid and admissible to probate if at the time of its making it complied with the internal law of the place where

...

(b) the testator was then domiciled ; or

....

Change of domicile

41 A change of domicile of the testator occurring after a will is made does not render it invalid as regards the manner and formalities of its making or alter its construction.

Construction of will

42 Nothing in this Part precludes resort to the law of the place where the testator was domiciled at the time of making a will in aid of its construction as regards an interest in land or an interest in movables.

Annex - Uniform Law on the Form of an International Will

Article 1

1. A will shall be valid as regards form, irrespective particularly of the place where it is made, of the location of the assets and of the nationality, domicile or residence of the testator, if it is made in the form of an international will complying with the provisions set out in Articles 2 to 5 hereinafter.

Copies may be obtained from the:

Queen's Printer Office
200 Vaughan Street
Winnipeg, Manitoba
R3C 1T5

MG-492